

**Letter of Findings Number: 01-20120433P
Individual Income Tax
For the Year 2009**

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ISSUES

I. Individual Income Tax – Negligence Penalty.

Authority: IC § 6-8.1-5-1; [45 IAC 15-11-2](#).

Taxpayers protest the assessment of a penalty for late filing and payment of individual income tax.

II. Individual Income Tax – Estimated Tax Penalty.

Authority: IC § 6-3-4-4.1; I.R.C. § 6654.

Taxpayers protest the assessment of a penalty for failure to remit sufficient estimated tax payments.

III. Individual Income Tax – Interest.

Authority: IC § 6-8.1-10-1.

Taxpayers protest the imposition of interest on their tax liability.

STATEMENT OF FACTS

Taxpayers are individuals residing in Indiana. For 2009, one of the Taxpayers had wages withheld for New York State income taxes as opposed to Indiana income taxes. Taxpayers filed their 2009 Indiana income tax return, which reflected an underpayment. The Department imposed penalty and interest based on the underpayment. Separately, the Department imposed a penalty for failure to make sufficient estimated tax payments for the 2009 tax year. Taxpayers protested the assessments, the Department conducted an administrative hearing, and this Letter of Findings results. Further information will be supplied as necessary.

I. Individual Income Tax – Negligence Penalty.

DISCUSSION

Taxpayers protest the assessment of a penalty for failure to remit Indiana individual income tax in a timely manner.

IC § 6-8.1-10-2.1 states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In this particular case, Taxpayers have provided evidence that its failure to timely pay taxes was the result of a unique, one-time occurrence beyond Taxpayers' control. Taxpayers' filing and payment history shows a consistent pattern of timely filing and payment of taxes except for the year at issue. Based on the circumstances present in this case, Taxpayers have provided sufficient information to demonstrate that their failure to timely remit taxes was due to reasonable cause.

FINDING

Taxpayers' protest is sustained.

II. Individual Income Tax – Estimated Tax Penalty.

DISCUSSION

Taxpayers protest the imposition of the ten percent penalty on Taxpayers' failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1, which provides for a ten-percent penalty for failure to make sufficient estimated payments during the tax year.

Under IC § 6-3-4-4.1(a) and (b), a taxpayer is required to make estimated payments equal to a percentage of the current year's Indiana income tax liability or the prior year's Indiana income tax liability if the taxpayer determines that the taxpayer's tax liability not otherwise paid by withholding was greater than \$1,000. The percentage requirements for the minimum estimated tax payments are set forth in I.R.C. § 6654(d)(1)(B). The estimated tax payments must be made in four installments, on the dates specified by I.R.C. § 6654(c). Failure to make sufficient estimated tax payments is subject to a ten (10) percent penalty in the amount of the underpayment.

With regard to the tax year in question, Taxpayers have provided sufficient information to conclude that the penalty for failure to remit timely estimated tax payments should not be imposed.

FINDING

Taxpayers' protest is sustained.

III. Individual Income Tax – Interest.

DISCUSSION

Taxpayers protest the imposition of interest with respect to its late payment of tax. For taxes unpaid by the due date for payment, IC § 6-8.1-10-1(b) provides for the imposition of interest. Notwithstanding Taxpayers' circumstances, IC § 6-8.1-10-1(e), provides that the Department cannot waive interest even if reasonable cause otherwise exists for penalty waiver.

FINDING

Taxpayers' protest is respectfully denied.

CONCLUSION

Taxpayers' protest is sustained on the negligence penalty. Taxpayers' protest is sustained with regard to the estimated tax penalty. Taxpayers' protest of interest is denied.

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